

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 Oleg Socolov,

4 Petitioner

5 v.

6 Attorney General of the US,

7 Respondent

Case No.: 2:21-cv-00356-JAD-VCF

**Order Denying Petition without Prejudice,  
Denying Pending Motions,  
and Closing Case**

[ECF Nos. 3, 4, 7]

8 Oleg Socolov brings this 28 U.S.C. § 2241 petition for a writ of habeas corpus to  
9 challenge his continued detention by U.S. Immigration and Customs Enforcement pending  
10 enforcement of his final removal order.<sup>1</sup> But Socolov has not applied to proceed *in forma*  
11 *pauperis* or paid the filing fee, leaving this matter improperly commenced.<sup>2</sup> Despite that error, I  
12 have reviewed Socolov's petition and determined that he failed to exhaust his administrative  
13 remedies. So I dismiss this case without prejudice.

14 **Discussion**

15 Generally, when a noncitizen "is ordered removed" the Attorney General is required to  
16 remove him within a 90-day "removal period."<sup>3</sup> But under 8 U.S.C. § 1231(a)(6), certain  
17 noncitizens who have been ordered removed "may be detained beyond the removal period and, if  
18 released, shall be subject to [certain] terms of supervision." Socolov claims that an Immigration  
19 Judge (IJ) entered an order of removal against him on May 1, 2020, and he is currently detained  
20 under § 1231(a)(6).<sup>4</sup> He appealed that removal order, and the Board of Immigration Appeals

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22 <sup>1</sup> ECF No. 1-1.

23 <sup>2</sup> 28 U.S.C. § 1915(a)(2); L.R. LSR 1-2.

<sup>3</sup> 8 U.S.C. §1231(a)(1)(A).

<sup>4</sup> ECF No. 1-1 at 2.

1 (BIA) dismissed that appeal on October 19, 2020. Socolov then filed a motion to reopen and  
2 reconsider his final removal order, which the BIA dismissed earlier this year.<sup>5</sup> But Socolov also  
3 filed a motion for bond redetermination, the IJ denied it for lack of jurisdiction, and the appeal of  
4 that denial is pending before the BIA.<sup>6</sup>

5 If a noncitizen held in custody under 8 U.S.C. § 1231(a)(6) is dissatisfied with the IJ's  
6 bond determination, he may file an administrative appeal so that "the necessity of detention can  
7 be reviewed by . . . the BIA."<sup>7</sup> If he remains dissatisfied, he may file a petition for habeas corpus  
8 in the district court.<sup>8</sup> Generally, noncitizens such who are detained under 8 U.S.C. § 1231(a)(6)  
9 after entry of final removal order and conclusion of all administrative review are required to  
10 exhaust substantive challenges to their removal proceedings as well as bond determinations.  
11 Here, Socolov claims that he is still actively pursuing his administrative remedies to challenge  
12 the IJ's bond determination.<sup>9</sup> The outcome of his appeal before the BIA may render this petition  
13 moot. So I dismiss his petition without prejudice as improperly commenced and unexhausted.

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14 <sup>5</sup> ECF No. 4 at 14–16.

15 <sup>6</sup> ECF No. 1-1 at 2.

16 <sup>7</sup> *Prieto–Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008); *see* 8 C.F.R. 236.1(d)(3) (before  
17 order of removal); 1236.1(d)(3) (after order of removal) (noncitizen may appeal to the BIA an  
Immigration Judge's custody and bond determination).

18 <sup>8</sup> *See, e.g., Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (petitioner "pursued  
19 habeas review of the IJ's adverse bond determination before appealing to the BIA. This short cut  
was improper. Leonardo should have exhausted administrative remedies by appealing to the BIA  
20 before asking the federal district court to review the IJ's decision"); *Alvarado v. Holder*, 759  
F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Sola v.*  
21 *Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument  
that was not raised below, which could have been addressed by the agency); *Singh v. Holder*,  
22 638 F.3d 1196, 1200–03 (9th Cir. 2011); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010)  
(no jurisdiction to review legal claims not presented in the petitioner's administrative  
proceedings before the BIA).

23 <sup>9</sup> ECF No. 1-1 at 2. In his motion to supplement petition, ECF No. 4, Socolov attaches a May 4,  
2021, BIA decision that dismissed his appeal of the denial of his motion to reopen and reconsider  
the denial of his application for special rule cancellation of removal and adjustment of status.

1 **Conclusion**

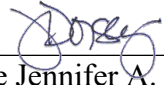
2 IT IS THEREFORE ORDERED that the Clerk is directed to **detach and file the petition**  
3 [ECF No. 1-1].

4 IT IS FURTHER ORDERED that the petition is DISMISSED without prejudice as  
5 improperly commenced and unexhausted.

6 IT IS FURTHER ORDERED that a certificate of appealability is denied because jurists  
7 of reason would not disagree with this order.

8 IT IS FURTHER ORDERED that petitioner's motion to compel immediate release [ECF  
9 No. 3], motion to supplement [ECF No. 4], and second motion to compel [ECF No. 7] are  
10 **DENIED as moot.**

11 IT IS FURTHER ORDERED that the Clerk of Court is directed to ENTER JUDGMENT  
12 accordingly and CLOSE THIS CASE.

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14 U.S. District Judge Jennifer A. Dorsey  
15 June 29, 2021  
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23 This decision pertains to the removal order. Socolov provides no further documents regarding his appeal of the IJ's January 28, 2021, denial of his motion for custody redetermination. *See* ECF No. 1-1 at 24–25.